IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WP(C).No. 2321 of 2007(B)

PETITIONERS:
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1. T.C. KURIEN,
THENGUMVILAYIL HOUSE, COCHIN PALACE P.O.,
TRIPUNITHURA.

2. T.B. JAYAKUMAR,
THEKKEDATH HOUSE, MARADU P.O., TRIPUNITHURA,
ERNAKULAM DISTRICT.

BY ADV. SRI.P.NARAYANAN

RESPONDENTS:
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1. THE STATE OF KERALA,
REP. BY SECRETARY (TAXES) SECRETARIAT,TRIVANDRUM.

2. THE TAHSILDAR (ASSESSING AUTHORITY UNDER
THE BUILDING TAX ACT), KANAYANNUR TALUK,ERNAKULAM.

BY GOVERNMENT PLEADER SRI. MUHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 2321/2007 B

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE AGREEMENT EXECUTED BY THE PETITIONERS DATED 11/4/04.

EXT.P2. COPY OF THE SALE DEED EXECUTED BY P2 IN FAVOUR OF M.P. SHAJI DT. 7/6/05.

EXT.P3. COPY OF THE OBJECTION BY THE P1 DT. 18/12/06.

EXT.P4. COPY OF THE ASSESSMENT ORDER BY R2 DT. 4/1/2007.

EXT.P5. COPY OF THE DEMAND NOTICE ISSUED BY R2 DT. 4/1/2007.

EXT.P6. COPY OF THE CIRCULAR BY R1 DT. 28/9/90.

EXT.P7. COPY OF THE INTERIM ORDERS DT. 11/1/07.

EXT.P8. COPY OF THE INTERIM ORDER DT. 8/1/2007.

True copy

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K.BALAKRISHNAN NAIR, J.

W.P.(C).No.2321 of 2007-B

Dated this the 7th day of March, 2007

JUDGMENT

The petitioners are aggrieved by Ext.P4 order of assessment of building tax made by the second respondent. Against the said order, they have got a right of appeal before the Revenue Divisional Officer. But, the petitioners submit, in view of Ext.P6 Circular issued by the Government, filing of appeal will be a futile exercise. So, this writ petition is filed directly before this Court.

2. Heard the learned Government Pleader for the respondents.

3. This Court has already held that the Government have no power or authority to issue directions to the appellate authority or to dictate how the appellate functions should be discharged. See the decision of the Apex Court in R.Rajagopala Vs. S.T.A. Trubunal (AIR 1964 SC 1573).

In view of the above position, if the petitioners file an appeal, the appellate authority shall consider the same and pass orders on it ignoring Ext.P6 Circular and uninfluenced by ..... The period this writ petition was pending before this Court shall be excluded while computing the period of limitation in filing the appeal. The interim order granted by this court will remain in force for a period of three

weeks from today.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

MS